

EXPLANATORY MEMORANDUM TO
THE VALUE ADDED TAX (PLACE OF SUPPLY OF SERVICES)
(EXCEPTIONS RELATING TO SUPPLIES NOT MADE TO RELEVANT
BUSINESS PERSON) ORDER 2014

2014 No. 2726

1. This explanatory memorandum has been prepared by HM Revenue & Customs on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 The instrument changes the place of supply rule for VAT purposes for most supplies of broadcasting, telecommunication and electronic (BTE) services when made to a non-business person. Currently the place of supply of such services is where the supplier belongs (save where supplied to a non-business person outside the EU or where supplies of electronically supplied services are made by a person outside the EU to a non-business person in the EU which are already made where the customer belongs). The purpose of this change is to ensure, as far as possible, that such supplies are taxed where they are consumed.

3. **Matters of special interest to the Select Committee on Statutory Instruments**

3.1 None.

4. **Legislative Context**

4.1 The Principal VAT Directive (Council Directive 2006/112/EC; “the PVD”) provides a framework for the common system of VAT. It prescribes rules identifying the place of supply of services. The PVD was amended by Council Directive 2008/8/EC which introduced a range of changes to those rules, known as the “VAT Package”. The changes have taken effect at different stages. This instrument implements in part Articles 58 and 59 of the PVD, as amended by Directive 2008/8/EC. It is the final part of the VAT Package and takes effect from 1st January 2015. Transitional rules in relation to the change are contained in Article 2 of Council Implementing Regulation (EU) No 1042/2013.

4.2 The instrument amends Schedule 4A to the VAT Act 1994 (“the Act”) which contains special rules setting out exceptions to the general rule that the place of supply of services to a non-business person is where the supplier belongs. That general rule is set out in section 7A(2)(b) of the Act.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 David Gauke MP, Financial Secretary to the Treasury, has made the following statement regarding human rights: “In my view, the provisions of the Value Added Tax (Place of Supply of Services) (Exceptions Relating to Supplies Not Made to Relevant Business Person) Order 2014 are compatible with the Convention rights”.

7. Policy background

7.1 VAT is a tax on consumption. The aim of the VAT Package series of changes is to modernise the rules on the place of supply of cross-border services so as to ensure, as far as possible, that services are taxed where they are consumed. This instrument is part of the final change required to implement the VAT Package.

7.2 The services covered by this instrument when made to a non-business person are currently taxed where the supplier belongs (with the exception referred to in paragraph 2.1). Such supplies made to non-business persons in the UK by suppliers in member States with a lower rate of VAT than the UK charge less VAT than suppliers in the UK. This change will mean that non-business persons in the UK will be charged the UK rate of VAT for such services wherever the supplier belongs creating a level playing field for UK businesses.

8. Consultation outcome

8.1 Business input has been provided through joint business/HMRC groups.

8.2 This Order was also published in draft at the time of the Autumn Statement in December 2013. No comments were received.

9. Guidance

9.1 HMRC have publicised the change on their website and will issue detailed guidance well in advance of the change coming into effect on 1 January 2015.

10. Impact

10.1 A Tax Information and Impact Note covering this instrument was published at Autumn Statement 2013 and is available on the HMRC website at [HM Revenue & Customs: Tax Information and Impact Notes \(TIINs\)](#). It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The consequence of the change to the place of supply rule is that those making supplies to non-business persons in other Member States would have to register for VAT in each of those Member States. To minimise the impact of the requirements on firms employing up to 20 people, as for any business, they will be able to register for a “Mini One Stop Shop” scheme (MOSS) in the Member State where they are established and submit one MOSS VAT return for all their intra EU BTE supplies. Separate changes being introduced at the same time will mean electronic marketplaces and App stores will generally be responsible for the VAT on the supply to the consumer, so many small software developers will not be impacted by the change.

11.3 This instrument is part of the VAT package agreed at EU level. HMRC is discussing implementation of the measure with small businesses through a working group.

12. Monitoring & review

12.1 This measure will be kept under review through communication with affected taxpayer groups. HMRC will also monitor VAT receipts in the sectors affected and the take up of MOSS.

13. Contact

Andy Heywood at HM Revenue & Customs Tel: 03000 544534 or email: andrew.heywood@hmrc.gsi.gov.uk can answer any queries regarding the instrument.